

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

GERALD OSCAR PERSON,

Petitioner,

v.

STEVE FRANKE,

Respondent.

3:10-cv-01255-JE

ORDER

Thomas J. Hester
OFFICE OF THE FEDERAL PUBLIC DEFENDER
101 SW Main Street, Suite 1700
Portland, OR 97204

Attorney for Petitioner

Kristen E. Boyd
STATE OF OREGON
DEPARTMENT OF JUSTICE
1162 Court Street, NE
Salem, OR 97301

Attorney for Respondent

HERNANDEZ, District Judge:

Magistrate Judge John Jelderks issued a Findings and Recommendation (doc. #31) and a Supplemental Findings and Recommendation (doc. #33) on September 19, 2012, and September 25, 2012, respectively. The Magistrate Judge specifically found that petitioner has presented a successive Petition for Writ of Habeas Corpus (doc. #2) without first obtaining permission by the Ninth Circuit as required under 28 U.S.C. § 2244(b)(3)(A). Accordingly, the Magistrate Judge recommends that I (1) deny petitioner's Motion to Stay (doc. #27); (2) dismiss this action without prejudice; (3) issue a Judgment dismissing this action without prejudice; and (4) decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and rule 72(b) of the Federal Rules of Civil Procedure.

Because no objections to the Magistrate Judge's Findings and Recommendations were timely filed, I am relieved of my obligation to review the record de novo. United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); see also United States v. Bernhardt, 840 F.2d 1441, 1444 (9th Cir. 1988) (de novo review required only for portions of Magistrate Judge's report to which objections have been made). Having reviewed the legal principles de novo, I find no error.

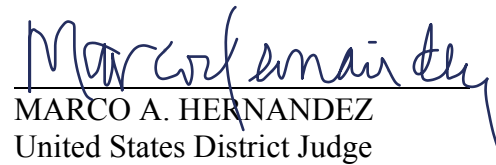
CONCLUSION

The court ADOPTS the Magistrate Judge's Findings and Recommendation (doc. #31) and Supplemental Findings and Recommendation (doc. #33). Accordingly, petitioner's Motion to Stay (doc. #27) is denied; (2) the Petition for Writ of Habeas Corpus (doc. #2) is dismissed without prejudice; and (3) I decline to issue a Certificate of Appealability on the basis that

petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 1 day of Nov, 2012.


MARCO A. HERNANDEZ
United States District Judge